

AMENDED IN SENATE MAY 2, 2005

AMENDED IN SENATE MARCH 29, 2005

**SENATE BILL**

**No. 857**

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**Introduced by Senator Kuehl**  
***(Coauthors: Senators Chesbro and Kehoe)***  
***(Coauthor: Assembly Member Berg)***

February 22, 2005

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An act to amend Section 5901 of the Fish and Game Code, and to amend Section 136.1 of, and to add Article 3.5 (commencing with Section 156) to Chapter 1 of Division 1 of, the Streets and Highways Code, relating to fish passages.

LEGISLATIVE COUNSEL'S DIGEST

SB 857, as amended, Kuehl. Fish passages.

Existing law provides that the Department of Transportation has full possession and control of all state highways. Existing law authorizes the department to enter into major damage mitigation contracts to perform major damage repairs and operations on state highways caused by sudden, unforeseen events. Existing law requires work performed under these contracts to be limited to physical construction, demolition, debris removal, and traffic control.

This bill would authorize work performed under these contracts to include remediation of barriers to fish passage. The bill would require the department, in collaboration with the Department of Fish and Game, to prepare an annual report to the Legislature describing the status of the department's progress in locating, assessing, and remediating barriers to fish passage, as defined, and to submit a list of priority sites for remediation on coastal streams to the Legislature, as specified. The bill would require the department also to complete assessments of potential barriers to anadromous fish prior to

commencing any project using state or federal transportation funds. The bill would require the department to submit these assessments to the department of Fish and Game to be added to the CALFISH database. The bill would also require projects to be constructed without presenting barriers to fish passage.

Existing law prohibits the construction or maintenance, in certain fish and game districts, of any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream.

This bill would revise the fish and game districts in which this prohibition applies.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The decline of naturally spawning salmon and steelhead
- 4 trout is primarily a result of the loss of appropriate stream habitat
- 5 and the inability of fish to get access to habitat, according to
- 6 recent reports to the Fish and Game Commission and by the
- 7 Department of Fish and Game.
- 8 (b) Increasing the naturally spawning salmon and steelhead
- 9 trout populations in California would provide a valuable public
- 10 resource, employment opportunities, and substantial economic
- 11 benefits to the state.
- 12 (c) Federal, state and local governments and nonprofit
- 13 organizations are spending hundreds of millions of public dollars
- 14 in California protecting and restoring habitat for salmon and
- 15 steelhead trout through watershed and fishery restoration
- 16 programs, with the state alone spending over two hundred
- 17 million dollars (\$200,000,000) for these purposes in the past five
- 18 years.
- 19 (d) The California Department of Transportation has
- 20 maintenance, construction, and oversight responsibility for the
- 21 state's roads, including approximately 5,000 stream crossings on
- 22 coastal streams.
- 23 (e) Stream crossings on roads frequently present barriers to the
- 24 migration of fish, and there is an extensive lack of information

1 regarding the number and extent of existing barriers to fish  
2 migration at state road stream crossings.

3 (f) Having this information would enable the department to  
4 better predict the time and funding required to complete  
5 transportation projects.

6 (g) Substantial savings to the state would result from improved  
7 ability to deliver transportation projects within their budgets and  
8 on time, and substantial benefit to the state's salmon and  
9 steelhead trout populations would result from remediation of  
10 barriers to fish passage at stream crossings

11 SEC. 2. Section 5901 of the Fish and Game Code is amended  
12 to read:

13 5901. Except as otherwise provided in this code, it is  
14 unlawful to construct or maintain in any stream in Districts 1,  
15 1  $\frac{3}{8}$ , 1  $\frac{1}{2}$ , 1  $\frac{7}{8}$ , 2, 2  $\frac{1}{4}$ , 2  $\frac{1}{2}$ , 2  $\frac{3}{4}$ , 3, 3  $\frac{1}{2}$ , 4, 4  $\frac{1}{8}$ , 4  $\frac{1}{2}$ , 4  $\frac{3}{4}$ , 11, 12,  
16 13, 23, and 25, any device or contrivance that prevents, impedes,  
17 or tends to prevent or impede, the passing of fish up and down  
18 stream.

19 SEC. 3. Section 136.1 of the Streets and Highways Code is  
20 amended to read:

21 136.1. The department may enter into major damage  
22 mitigation contracts to perform major damage repairs and  
23 operations on state highways when caused by sudden, unforeseen  
24 events such as storms, landslides, flooding, high surf,  
25 earthquakes or other geological action, or civil unrest. These  
26 contracts may be entered into prior to the onset of major damage  
27 in order to retain the contractor in readiness to respond to  
28 incidents as needed. Work performed under each contract shall  
29 be limited to physical construction, demolition, debris removal,  
30 remediation of barriers to fish passage, and traffic control. The  
31 work shall be considered, for funding purposes, as a public works  
32 construction project.

33 SEC. 4. Article 3.5 (commencing with Section 156) is added  
34 to Chapter 1 of Division 1 of the Streets and Highways Code, to  
35 read:

36  
37 Article 3.5. Barriers to Fish Passage  
38

39 156. For purposes of this article, the following definitions  
40 shall apply:

1 (a) “Fish passage” means the ability of an anadromous fish to  
2 access appropriate habitat at all points in its life cycle, including  
3 spawning and rearing.

4 (b) “Department” means the Department of Transportation.

5 156.1. In collaboration with the Director of the Department of  
6 Fish and Game, the Director of the Department of Transportation  
7 shall prepare an annual report to the Legislature describing the  
8 status of the department’s progress in locating, assessing, and  
9 remediating barriers to fish passage. This report shall be given to  
10 the Legislature by October 31 of each year through the year  
11 2020.

12 156.2. (a) The department shall complete surveys of all  
13 culverts on the state highway system on coastal streams where  
14 anadromous fish are, or historically were, found to assess the  
15 presence of barriers to fish passage, add the resulting coastal  
16 stream data to the database maintained by the Department of Fish  
17 and Game that is currently known as CALFISH, and in  
18 collaboration with the Department of Fish and Game, submit a  
19 list of priority sites for remediation on coastal streams to the  
20 Legislature by December 31, 2009. The department shall use  
21 methodologies approved by the Department of Fish and Game.

22 (b) *The department’s survey and assessment work performed*  
23 *pursuant to subdivision (a) shall first be funded from grant*  
24 *moneys, privately-provided resources, environmental mitigation*  
25 *or resource funds, or other funds available for those purposes.*  
26 *The department’s survey and assessment work performed*  
27 *pursuant to subdivision (a) shall not be funded from State*  
28 *Highway Account funds, other than those available for the*  
29 *department’s ongoing field assessment of culverts, unless the fish*  
30 *passage assessments and surveys are undertaken as part of the*  
31 *other necessary project assessment work or are related to*  
32 *assisting local governments, providing matching funds for*  
33 *grants, performing project mitigation or environmental review*  
34 *work, complying with a court order or federal or state law,*  
35 *facilitating a state cost savings, or for the purposes of Section*  
36 *156.5.*

37 156.3. The department shall pursue development of a  
38 programmatic environmental review process with appropriate  
39 state and federal regulatory agencies for remediating barriers to  
40 fish passage that will streamline the permitting process for

1 projects. The department shall include a description of its  
2 progress on this review process in the report specified in Section  
3 156.1.

4 156.4. For any project using state or federal transportation  
5 funds programmed after January 1, 2006, the department shall  
6 insure that, if the project affects a stream crossing on a stream  
7 where anadromous fish are, or historically were, found, an  
8 assessment of potential barriers to fish passage is done prior to  
9 commencing project design. The department shall submit the  
10 assessment to the Department of Fish and Game and add it to the  
11 CALFISH database. If any structural barrier to passage exists,  
12 remediation of the problem shall be designed into the project by  
13 the implementing agency. New projects shall be constructed so  
14 that they do not present a barrier to fish passage. When barriers  
15 to fish passage are being addressed, plans and projects shall be  
16 developed in consultation with the Department of Fish and  
17 Game.

18 156.5. For any repair or construction project using state or  
19 federal transportation funds that affects a stream crossing on a  
20 stream where anadromous fish are, or historically were, found,  
21 the department shall perform an assessment of the site for  
22 potential barriers to fish passage and submit the assessment to the  
23 Department of Fish and Game.